Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of	)	
Federal-State Joint Board on Universal Service	)	**CC Docket No. 96-45**

REPLY COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.429(g) of the Commission's Rules, 47 C.F.R. § 1.429(g), hereby replies to selected comments on Petitions for Reconsideration of the *Fourth Order on Reconsideration*[1] filed in the above-captioned matter. Specifically, TRA responds to comments submitted by AT&T Corp. ("AT&T"), BellSouth Corporation ("BellSouth"), and the Personal Communications Industry Association ("PCIA"). TRA opposes the contention of these parties that the *de minimis* universal service contribution level should revert to its previous level.

By raising the *de minimis* universal service contribution level to $10,000, the Commission has taken action to reduce the not insubstantial economic costs associated with the completion and submission by small carriers, and the processing of universal service worksheets by the universal service Administrator, in cases where those processing and related costs would likely exceed any contribution to the universal service fund by small carrier entities. Contrary

[1] *In the Matter of Federal-State Joint Board on Universal Service, Fourth Order on Reconsideration*, CC Docket No. 96-45, FCC 97-420 (released December 30, 1997) ("*Fourth Order*").

to the assertions of AT&T, BellSouth and PCIA, the *Fourth Order* stops far short from exempting "an entire class of carriers from contribution obligations", an action which, should it have desired to do so, would nonetheless have been unquestionably within the Commission's authority pursuant to Section 254 of the Telecommunications Act of 1996.[2] Through the *Fourth Order*, the Commission has both minimized administrative costs and maximized the revenues available to support universal service programs. And it has done so in a manner which will not disproportionately burden the contributing carriers which will continue to account for, and report, end user revenues on FCC Form 457. Accordingly, TRA urges the Commission to refrain from modifying either the *de minimis* contribution level established by the *Fourth Order* or the means by which resale carrier revenues under that level will be reported for universal service funding purposes.

The Commission's decision to raise the *de minimis* contribution level was well-reasoned; no commenter has provided a convincing justification for disturbing that decision. As the Commission has appropriately recognized, "the public interest would not be served if compliance costs associated with contributing to universal service were to exceed actual contribution amounts.[3] In raising the *de minimis* contribution level from $100 to $10,000, the Commission has "take[n] into account contributors' compliance costs in addition to the Administrators' administrative costs of collection."[4] Specifically including such administrative

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[2] 47 C.F.R. § 254.

[3] *Fourth Order,* CC Docket No. 96-45, FCC 97-420 at ¶ 295.

[4] *Id.* TRA notes that this approach, which takes into account the disproportionately burdensome effects on small telecommunications entities required to comply with the Commission's universal service reporting requirements, is fully consistent with the 1996 Act's concern that smaller entities will play a significant role in the development of a truly competitive telecommunications environment. For this reason, the Commission has held that smaller carrier initiatives are to be encouraged and fostered to the greatest extent possible.

costs as those "associated with identifying contributors, processing and collecting contributions, and providing guidance on how to complete the Universal Service Worksheet",[5] the Commission exercised in a very narrow manner the discretion granted it by Section 254(d) to "exempt a carrier or class of carriers from this requirement if . . . the level of such carrier's contribution to the preservation and advancement of universal service would be *de minimis*."[6]

In opposing the *Fourth Order*'s modification of the *de minimis* contribution amount, commenters ignore the most fundamental point in support of the Commission's decision -- the *de minimis* level has been raised in order that the universal service fund may avoid suffering a net loss from the cumulative costs of processing numerous contribution reports which simply cannot generate revenues sufficient to offset the time, effort and expense involved for Administrator oversight of the process. It is patently self-serving for large carriers whose revenue levels by far exceed the *de minimis* contribution amount, and who will, accordingly, remain subject to the Commission's enunciated universal service reporting obligations in any event, to argue that smaller entities (which will feel the administrative costs of reporting much more keenly than all other contributors) must be compelled to strain the Administrator's resources. Requiring such carriers to continue filing universal service worksheets would effectively divert to unnecessary administrative purposes the universal service funds which should be appropriately allocated to the support of universal services themselves. By decreasing the administrator's processing costs, the Commission has simultaneously managed to retain the highest possible universal service funding base, ensuring that virtually all telecommunications revenues will

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[5] *Id.* at ¶ 296.

[6] 47 C.F.R. § 254(d). Thus, AT&T's strongly held opinion that "no carrier -- regardless of size -- should be exempt" (Comments of AT&T at 4) finds no support in the statute and, accordingly, can be afforded no legal weight.

remain subject to universal service contribution requirements, either through direct contributions or through a pass-through or other recovery of such contributions by contributing carriers.

PCIA argues that the Commission's chosen method for maintaining the integrity of the universal service contribution base is inequitable and thus in violation of the spirit of Section 254. To demonstrate the purported inequity, PCIA argues that the *Fourth Order* inappropriately "singl[es] out facilities-based carriers with reseller customers", and "places enormous administrative burdens on facilities-based carriers that allow resale of their services."[7] As to PCIA's first point, PCIA is no doubt aware that all telecommunications carriers are obligated to allow resale of their services pursuant to the Telecommunications Act of 1996.[8] Thus, far from "singling out" any subset of entities, the Commission has merely broadened an existing reporting obligation of general applicability to the carriers in possession of the information to be reported. Indeed, having determined that it would be economically infeasible to obtain the requisite revenue data from *de minimis* resale carriers themselves, the Commission has appropriately placed this obligation on the underlying carrier, that is, the entity which has a contractual relationship with the resale carrier qualifying for the *de minimis* exemption, and coincidentally the only other source from whom such information is available.

Because the underlying carrier bills and receives revenue from the *de minimis* resale carrier, the underlying carrier will always possess information concerning the revenues attributable to that resale carrier. Thus, PCIA's assertion that "facilities-based carriers will have no method to verify the accuracy of a reseller's representation that it meets the exemption

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[7] PCIA Comments at 5.

[8] 47 C.F.R. § 251(c)(4).

requirements"[9] is wholly without merit. All an underlying carrier need do to determine whether a resale carrier's revenues should be treated as end user revenues is to examine its own invoices for services. Similarly lacking in substance is PCIA's fear that wholesale carriers will need to "amend their Worksheets if they receive untimely information from resellers"[10] as to whether the reseller meets the *de minimis* exemption on a going-forward basis. Such a carrier requires no information from its resale carrier customer which cannot be supplied from its own internal records. Thus, the underlying carrier is entirely capable of applying the Commission's announced quarterly contribution factors to the resale carrier revenue data in its possession. There is, therefore, no justification for a contributing carrier's failure to submit timely, accurate universal service worksheets.

Finally, underlying carriers have already had to develop accounting mechanisms to identify end user revenues and to determine under what circumstances (and in what manner) universal service contributions will be recovered. And as PCIA admits, "computerized billing systems are able to recognize resellers."[11] The minor modification of these existing systems to accommodate the incorporation of revenue data from resale carriers with revenues below the *de minimis* contribution level can hardly be deemed to constitute the *enormous* administrative burdens PCIA claims the *Fourth Order* will engender.

BellSouth adds that the *Fourth Order* is not "competitive neutrality", asserting that "the Commission is shifting the reseller's obligation to contribute to the universal service fund

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[9] PCIA Comments at 5.

[10] *Id.* at 6.

[11] *Id.* at 7.

to the underlying carrier."[12] This is simply not true. To begin with, a reseller with revenues which would generate a universal service contribution below the *de minimis* level has no independent contribution obligation. More importantly, as the Commission has recognized, carriers are free to recover universal service contributions as they see fit.[13] The underlying carrier is free to pass through the universal service contribution on these *de minimis* revenues directly to the resale carrier, to recover contributions from an overall rate adjustment, or in any other fashion it chooses. In view of the fact that these resale carriers are direct competitors of their underlying service providers, it is a virtual certainty that such contributions will be passed through in one fashion or another. Indeed, the brief history of the Commission's universal service contribution mechanism bears this out dramatically. Ultimately, to the extent universal service contributions are passed through by the underlying carrier, no resale carrier is "exempt" from universal service contribution obligations. And an underlying carrier which is capable of recovering this contribution has suffered no competitive disadvantage.

AT&T raises far-fetched concerns that resale carriers will engage in convoluted corporate maneuvers to manipulate the *de minimis* contribution in order to evade legitimate universal service contribution obligations. According to AT&T, this evasive tactic could be accomplished by a large resale carrier which identifies as wholesale revenues amounts which in the aggregate would far exceed the $10,000 *de minimis* universal service contribution and then distributes that service to a host of specially created corporate subsidiaries, with each subsidiary accountable only for revenues falling below the *de minimis* contribution amount. In essence,

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[12] Comments of BellSouth at 2.

[13] *Federal-State Joint Board on Universal Service* ("*Report and Order*"), 12 FCC Rcd. 8776, ¶ 851 (1997), *recon.*, CC Docket No. 96-45, FCC 97-420 (1997), *pet. for rev. pending sub nom.* Texas Office of Public Utility Counsel v. FCC, Case No. 97-60421 (5th Cir., June 24, 1997).

AT&T suggests that otherwise rational resale carriers will undertake significant -- and totally superfluous -- business costs of corporate formation, maintenance of formal corporate structure and the filing of numerous, separate tax filings. Even more unbelievably, resale carriers will create this type of "corporate circus" atmosphere simply to reap the "advantage" of having all such *de minimis* revenue treated as end-user revenues and thus, included in the universal service contribution base of the supplier resale carrier.[14]

Viewing this situation rationally, only two scenarios should possess any relevance to AT&T: either (i) a resale carrier customer is making its own universal service contribution (and such revenues would not constitute part of AT&T's universal service contribution base); or (ii) that resale carrier customer is exempt from contribution, in which case the revenues are treated as end-user revenues in all respects -- that is, AT&T must report these revenues *and* AT&T may also recover these contributions from resale carrier customers just as it recovers them from all business customers.[15]

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[14] "[U]nderlying carriers should include revenues derived from providing telecommunications to entities qualifying for the *de minimis* exemption in lines 34-47, where appropriate, of their Universal Service Worksheets." *Fourth Order*, CC Docket No. 96-45, FCC 97-420 at ¶ 298.

[15] As resale carriers are painfully aware, AT&T (like many other underlying service providers) routinely recovers universal service contributions from its business customers by imposing assessments as much as a full percentage point in excess of the Commission's announced universal service contribution factors, effectively offsetting a portion of the universal service contribution attributable to the carrier's residential customer base in this manner. For this reason if for no other, it is impossible to conceive of any resale carrier customer which would choose to jump through the corporate hoops described by AT&T only to place itself in the position of having to incur an artificially elevated universal service assessment on its revenues.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to retain the $10,000 *de minimis* contribution level set forth in the *Fourth Order*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jeannine Greene Massey, hereby certify that copies of the foregoing Reply Comments of the Telecommunications Resellers Association were this 6th day of April, 1998, served by first class mail, postage prepaid, on the following:

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